

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 131 of 1983

in

SPECIAL CIVIL APPLICATION No 3917 of 1982

with

Civil Application No. 1707 of 1983.

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

JALARAM CHAMBERS HOUSING ASSOCIATION

Versus

GUJARAT HOUSING BOARD

Appearance:

MR PB MAJMUDAR for Appellants
NOTICE SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

Date of decision: 18/08/98

ORAL JUDGEMENT (Per C.K. Thakker, J.)

1. This appeal is directed against the judgment and order dated March 15, 1983 passed by the learned single Judge summarily rejecting Special Civil Application No. 3917 of 1982.

2. Appellants are the original petitioners. They approached this Court by filing Special Civil Application No. 3917 of 1982 for an appropriate writ, direction or order cancelling the price fixed by the Gujarat Housing Board, Ahmedabad, vide Annexures 'C' and 'D' of the shops and offices situated at S.No. 694 part at Boucharaji Road, Karelibaug, Baroda and directing the Board to fix the price at a reasonable rate taking into account the price paid by the Board for the acquisition of the land, cost of building materials and other services from the year of the commencement of the construction till completion of the building, i.e., at the end of the year 1978.

3. The case of the petitioners as stated in the order passed by the learned single Judge was that petitioner No.1, Jalaram Chambers Housing Association was an Association and other petitioners were its members. The Gujarat Housing Board, Baroda Division issued an advertisement inviting offers from middle class citizens for allotment of shops and offices to be constructed in Karelibaug, Baroda. The said advertisement stipulated conditions on which the allotment was to be made. It was stated that the estimated price for shops and offices were Rs.28,000/- and Rs.18,000/- respectively which was to be paid within eight years from the date of allotment by monthly instalments of Rs.337/- for shops and Rs.243/- for the office. Executive Engineer, respondent No.2, constructed 16 shops, 15 offices and 80 residential flats in S.No. 694 part. The petitioners were given possession of the respective shops and offices on January 29, 1982. It was asserted by the petitioners that at the time of allotment of shops they were required to pay 25% of the purchase price. The remaining amount was to be paid in instalments. It was the case of the petitioners that thereafter illegally and unreasonably, the price of the shop was revised to Rs.62,200/- and the monthly instalment was fixed at Rs.850/- to be paid in 96 equal instalments. Likewise, the price of the office premises was revised to Rs.37,100/- and monthly instalment was enhanced to Rs.507/- which was also to be paid in 96 instalments. The said action was arbitrary, unlawful and violative of the fundamental rights of the petitioners. They, therefore, approached this Court by filing the above petition.

4. After notices were issued, the respondents appeared and an affidavit-in-reply was filed by one Mr. R.B. Desai. It was stated that the petitioners were occupying commercial premises and the disposal price was fixed by the Board after considering the calculations put before the Board by the Deputy Executive Engineer and Executive Engineer and on the basis of the value of land and built up area. It was further stated that the State Government as a general policy has already sanctioned disposal of shops and offices at market rate, which in the instant case, was calculated at Rs.1700/- per sq.mt. by the Executive Engineer. Affidavit in rejoinder was also filed to the affidavit-in-reply.

5. At the time of hearing of this LPA it was stated by the learned counsel for the appellants that the learned Single Judge wanted to know as to how the calculation was made and the price was fixed. Accordingly, a direction was issued by the learned Single Judge to the Gujarat Housing Board to file further affidavit. Though such direction was not in writing our attention was drawn to further affidavit-in-reply filed by Mr. R.B. Desai, dated December 14, 1982. Paragraph 1 of the said affidavit stated;

"That, we are directed by this Hon'ble Court to state as to how the Gujarat Housing Board has calculated the disposal price of the shops and offices allotted to the petitioners and what is cost of these premises to the Board. I say that....."

6. It was submitted that inspite of the direction issued by the Court, reading additional affidavit, it is clear that nothing was mentioned by the deponent in that affidavit excepting the fact that "the calculation was made by the Deputy Executive Engineer and Executive Engineer on the basis of the value of the land and built up area and the Board decided that the premises which are shops and offices should be disposed of by outright sale by fixing the said market value as upset price". Annexure 'I', a copy of the resolution was also annexed to the further affidavit.

7. The learned single Judge rejected the petition mainly on two grounds, firstly, he was of the opinion that initially when the advertisement was issued by the Gujarat Housing Board, the said advertisement was in the nature of "invitation to offer". After the parties agreed, a contract was entered into, the price was fixed

and the petitioners agreed to pay the price. It was not open to the petitioners thereafter to raise any dispute regarding price. Such a contention could not be advanced by the petitioners. In this connection, attention of the learned Single Judge was invited to a decision of a Single Judge of this Court (Coram: A.M. Ahmadi, J. as he then was) in Special Civil Application No. 704 of 1980 decided on December 6, 1982. In that case also, a similar contention was raised which did not find favour with the learned Single Judge.

8. In the present case, following the above judgment, learned Single Judge observed,

" I have gone through the aforesaid judgment and I agree with Mrs. Mehta that the ratio of the said judgment applies to the facts of the present petition. The petitioner therein had applied under a scheme, known as the S.R.Scheme, but that scheme had to be abandoned. Instead, the flats were constructed under the scheme known as EMS Scheme and the petitioners were put to a choice to accept the flats prepared under EWS Scheme. The petitioners exercised the option and accepted the possession of the flats and then insisted that they should be governed by the S.R.Scheme under which they had applied for the flats. The Board argued that that scheme was abandoned and the petitioners had with open eyes accepted the EWS scheme and the petitioners must be held bound to comply with those terms."

9. In Special Civil Application No. 704 of 1980, Ahmadi, J. observed,

He accepted the said terms and conditions and was accordingly allotted a flat. After obtaining the possession of the flat, he started making representation for reduction of the price and the amount to be paid by way of instalments but the Board did not accede to his request. He did not pay the instalments and, therefore, the possibility of his eviction from the flat loomed large. In the case of Baldevbhai also, as the instalments were not paid, the Board proposed to evict him. It was at that stage that the two petitions came to be filed. As stated earlier, Baldevbhai having never applied under the SR Scheme, can hardly expect to claim the benefits of that scheme. Both the petitioners were offered and allotted flats under the EWS scheme

and after having accepted them allotment on the terms and conditions on which the offer was made, they cannot be permitted to go back."

10. The aforesaid judgment of Ahmadi, J. was assailed in a Letters Patent Appeal No.2 of 1983. The Division Bench consisting of M.P. Thakkar, C.J. (as he then was) and R.J. Shah, J. dismissed the appeal observing inter alia, as under:

"We agree with the reasoning and conclusion of the learned single Judge that there is no substance in the petition on merits.

Both the petitioners had obtained allotment of the premises under EWS scheme and therefore they were bound to pay the instalments as per the demands made in accordance with the scheme. Dismissal on merits is perfectly justified. LPA is therefore dismissed (Emphasis supplied)."

11. The learned Single Judge, in the judgment under appeal, further observed;

"I may further mention that the main prayer of the petitioners in the present petition is to cancel the price fixed by Annexures "C" and "D" and to direct the respondents to fix the price at a reasonable rate, taking into consideration the price paid by the Board for the acquisition of the lands, the costs of the building material and other services taken from them from the year of commencement of construction and till completion of the building. This would indeed require taking into consideration facts, and for that matter numerous facts. The remedy sought by the petitioners by way of a writ cannot be entertained on that ground also."

12. The second ground which weighed with the learned Single Judge was that fixation of price depends on various factors. The Board will have to consider the facts regarding acquisition of land, cost of building materials and other expenses from the year of commencement of construction till completion thereof. In the opinion of the learned Single Judge "this would indeed require taking into consideration facts, and for that matter numerous facts. The remedy sought by the petitioners by way of a writ cannot be entertained on that ground also."

13. We are in full agreement with the reasoning of the learned Single Judge. So far as the first ground is concerned, it is clear that the matter was in the realm of contract. It was argued by the learned advocate for the appellants that even in contractual matters, a writ petition would lie and that it cannot be said that such a petition is not maintainable at law. There cannot be two opinion about the said proposition of law. But the contracts are of different types. In the instant case, the learned Single Judge was, in our opinion, right in observing that at the initial stage there was merely an invitation to offer. At that stage, final price was not fixed. it was merely a tentative or estimated price. The final price was to be fixed subsequently. Accordingly, the price was fixed and shops and offices were offered to the appellants on that basis. The appellants with open eyes accepted the price and took possession of the shops and offices. Thereafter it was not open to them to raise objection regarding quantum of price.

14. Apart from the fact that the point concluded, as observed by the learned Single Judge in Special Civil Application No. 704 of 1980 and LPA No.2 of 1983, there is a direct decision of the Supreme Court in Premji Bhai v. Delhi Development Authority, AIR 1980 SC 738. In Premji Bhai, the petitioner purchased a flat offered by the respondent authority. After payment of price, he took possession thereof. Subsequently, however, he filed a petition under Article 32 of the Constitution contending that the surcharge calculated by the authority was illegal and violative of Article 14 of the Constitution. Dismissing the petition, the Supreme Court held that "writ remedy was not proper for reopening a concluded contract with a view to get a part of the purchase price paid and the benefits taken." In Their Lordships' opinion "those who contract with open eyes must accept the burden of the contract along with its benefits. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract would ever have a binding force." (Emphasis supplied)

15. In our opinion, therefore, the legal position has been concluded in Premji Bhai. The learned Single Judge was, therefore, wholly right in not entertaining the petition and in refusing the relief.

16. Even on second point, in our view, the learned

Single Judge was right. Fixation of price depends on various factors. Such factors will have to be considered by the appropriate authority in the light of various circumstances. Ordinarily, in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, this Court does not undertake the investigation of facts and when the learned Single Judge has not adopted such course, it cannot be said that by doing so, he has committed an error of law which requires interference.

17. For the foregoing reasons, we do not see any ground to interfere with the order passed by the learned Single Judge. LPA deserves to be dismissed and is accordingly dismissed. Since, however, nobody appears on behalf of respondents though served, there shall be no order as to costs.

18. As the appeal is dismissed, ad-interim relief granted earlier stands vacated. Learned advocate for the appellants states that the appellants may approach higher forum. He, therefore, prays that ad-interim relief which was granted before more than 15 years in 1983, may be continued for some time. In the facts and circumstances of the case, in our opinion, the prayer is reasonable. Ad-interim relief granted on March 15, 1983 is continued upto 30.10.1998. Civil Application stands disposed of accordingly. No order as to costs.
